

Exhibit H

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: CENTURYLINK SALES)
PRACTICES AND SECURITIES)
LITIGATION)
MDL NO.
17-2795 (MJD/KMM)
THIS DOCUMENT RELATES TO:)
CIVIL FILE NO. 18-296 (MJD/KMM))

REMOTE PROCEEDINGS OF THE
VIDEOTAPED EXPERT DEPOSITION OF BRUCE DEAL
FRIDAY, APRIL 24, 2020

REPORTED BY KIMBERLY EDELEN,
CSR. NO. 9042, CRR, RPR.

1 REMOTE PROCEEDINGS OF THE VIDEOTAPED EXPERT
2 DEPOSITION OF BRUCE DEAL, TAKEN ON BEHALF OF THE
3 PLAINTIFF AND THE CLASS, AT 9:06 A.M., FRIDAY,
4 APRIL 24, 2020, BEFORE KIMBERLY A. EDELEN, C.S.R.
5 NO. 9042, CRR, RPR.

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15 ALSO PRESENT: TROY JOHNSON, VIDEOGRAPHER
MICHAEL HARTZMARK, Ph.D.

1 BRUCE DEAL,
2 having been first duly sworn by the reporter, was
3 examined and testified as follows:

4 THE WITNESS: I do.

5 THE VIDEOGRAPHER: Okay. You may proceed,
6 Counsel.

7
8 EXAMINATION

9 BY MR. BLATCHLEY:

10 Q Thank you, everyone. And thank you,
11 Mr. Deal, for bearing with us on the -- on the
12 technical aspects and making yourself available
13 remotely. I really do appreciate it. I know how
14 difficult at times it is for everyone, so thank you
15 for doing this and being here.

16 If I could, can I get you again to state
17 your full name for the record.

18 A Sure. It's Bruce Deal, B-r-u-c-e, last
19 name Deal, D-e-a-l.

20 Q And provide your home address, please.

21 A Home address is 98 Hawthorne Drive,
22 Atherton, California 94027.

23 Q So, Mr. Deal, I know you're an experienced
24 deposition witness, but I want to just, again,
25 because we're remote deposition, quickly just go

1 kind of the key issue in some sense on those back
2 end corrective disclosures.

3 I realize that was a long answer but
4 hopefully that gave a little color around your
5 description.

6 Q It was helpful.

7 So and, again, I hate to go back to the
8 elevator version, but, again, what you're saying is
9 that because of the nature of the disclosures, you
10 know, it's really not clear if they caused the stock
11 to decline?

12 A That's -- I'm being a little -- I'm sort of
13 waffling a little bit on there just thinking about
14 it out loud.

15 I haven't -- put it this way: I haven't
16 done an analysis to say was there other information
17 on those days that also caused it to -- the stock
18 price to drop.

19 So that may well be an issue and that's
20 sort of a form of what we were discussing before.
21 But I think to the extent -- let's just accept in a
22 more hypothetical sense that that was the only thing
23 that happened and there's no dispute about the fact
24 that the filing of the lawsuit, that did -- you
25 know, following those the stock price dropped.

1 I think the problem with that from an
2 economic perspective and a damages model perspective
3 is that's not the same as a revelation of an actual
4 truth. That's -- you know, you can certainly
5 imagine especially in this Wells Fargo environment
6 that that reflects concerns about oh, maybe there is
7 something out there.

8 And I discussed this quite extensively in
9 my report and I looked to equity analysts as to say
10 is this a substantive disclosure that would truly
11 suggest that the discounted value of the future cash
12 flows has meaningfully changed, or is this more
13 likely a signal of potential concern but not
14 something that's an obvious driver of fundamental
15 economic value here.

16 And my conclusion is it's much more of the
17 latter, that it's -- that it's not an allegation
18 that we didn't get the contract. It's -- there's
19 nothing in it that was new in concept. Allegations
20 of cramming and billing concerns have been around
21 for a long time. But in that environment of Wells
22 Fargo it's obviously a concern of oh, maybe there's
23 something here, but -- but it's no more than that.

24 Q I'll follow up on your statement there. So
25 you're not suggesting -- you said it's not new in

1 concept. You're not suggesting that the
2 whistleblower lawsuit that was filed on the
3 corrective disclosure was known sometime prior to
4 that date, right?

5 A That's correct. And I'm surely not saying
6 that the market somehow knew six months before that
7 Ms. Heiser was going to file a lawsuit or had a
8 draft of it or anything like that. I'm not aware of
9 anything like that.

10 It's a more general statement that in kind
11 of consumer facing businesses like this, and this
12 being, you know, telecom, Internet, consumer
13 services, all of that, these are very common
14 allegations. I myself have been involved in cases
15 involving these kind of things, so...

16 Q In those cases --

17 A You cut out. I don't know if your -- I
18 missed the first few words of that.

19 Q I was saying -- can you hear me?

20 A I can hear you, yes.

21 Q Yeah.

22 You weren't a defendant in those cases,
23 were you?

24 A No. No. Fortunately, I don't know if this
25 has been your experience as well, as someone who

1 spends their life dealing with disputes all the
2 time, I've actually -- knock wood, I've never
3 actually been a party to one, so, no, no, this is in
4 my expert capacity. Thanks for clarifying that.

5 Q Right. So, again -- but you're not saying
6 that Ms. Heiser's lawsuit, the facts contained in
7 that lawsuit, the other information disclosed on
8 June 16th was publicly known or somehow existed in
9 the market prior to that time?

10 A Again, I agree with that certainly as to
11 the specifics. I'm not aware that Ms. Heiser's
12 lawsuit or even any of the subsequent lawsuits that
13 are referenced in the Complaint, that those -- that
14 specific information about those specific lawsuits
15 was known.

16 Q Got it.
17 And then certainly the same is true of the
18 July 12th corrective disclosure, you're not
19 suggesting that investors were aware of the
20 investigation by the Minnesota attorney general or
21 the, you know, facts set forth in the Complaint that
22 they filed prior to July 12th of 2017?

23 MR. BLAIR: Objection. Object to the form.

24 THE WITNESS: I would certainly agree to
25 the last part of that because, again, I have no

1 reason to think that investors knew about the actual
2 filing of the lawsuit.

3 I don't actually know about the first part
4 of your statement, which is was it -- was there
5 knowledge that there was some investigation going
6 on. I don't know that. I don't think it really
7 changes your question, as I understand the specific
8 things pointed to is the actual filing of the
9 lawsuit.

10 But I just -- I don't want to imply that I
11 know more than I do know about what was public about
12 that Minnesota situation.

13 BY MR. BLATCHLEY:

14 Q Yeah. So I just want to clarify that.
15 So did you look at whether there was any
16 public indication of the Minnesota attorney
17 general's investigation prior to July 12th?

18 A I don't -- the answer is no in the sense I
19 don't specifically recall any information about it.
20 I think -- I do cite something -- as I recall, I
21 cite something else in Minnesota, I think
22 Senator Klobuchar's, but I think that may be
23 something, you know, different, as I recall.

24 But I'm not aware -- certainly, Mike, I'm
25 not aware of any -- I didn't specifically analyze

1 what that lawsuit -- and that's not really my -- my
2 contention isn't that that -- anything specific
3 about that was known. That's not my -- my view.

4 Q Okay. And then certainly if there was
5 anything, it would be in your Appendix B. And
6 assuming there's nothing in Appendix B concerning a
7 Minnesota investigation prior to July 12th, we're on
8 the same page?

9 MR. BLAIR: Object to the form.

10 THE WITNESS: I think I agree with that.
11 I'm not aware of anything in Appendix B that would
12 suggest that it was, but I don't recall or I don't
13 remember specifically looking for that.

14 BY MR. BLATCHLEY:

15 Q Yeah. Investors in the public didn't know
16 about a lawsuit before -- the filing of the lawsuit
17 before it was filed. How about that?

18 A Were you stating that specific -- I mean, I
19 think I could probably answer it more generally if I
20 understand your question is I'm not -- I'm not
21 contending or I don't have any information to
22 suggest that investors knew about any of the
23 specific lawsuits that are mentioned in the
24 Complaint prior to them hitting the press release
25 times and things like that.

1 I'm not -- this isn't the sort of oh,
2 that -- that information, specific information was
3 leaked two weeks before or anything like that. I
4 don't -- I suppose that's possible but that's not
5 what I understand to be the facts.

6 Q Okay. And so, again, on -- let's just --
7 June 16th, setting aside June 19th for the moment,
8 and July 12th, of the three dates, the corrective
9 disclosure dates.

10 Are you with me on that?

11 A So we're talking about the first and the
12 third?

13 Q Yeah.

14 A Yeah.

15 Q And did you agree with Dr. Hartzmark that
16 there was a statistically significant stock price
17 decline on those dates following the corrective
18 disclosures?

19 A Yes, I think, is the answer to that. Give
20 me a second. I just want to get to my table
21 summarizing that.

22 I've got a table -- or a figure here. My
23 analysis is -- let me see here. Here we go.

24 Yes. I'm on Figure 12 just to reference
25 that on Page 85. So both Dr. Hartzmark and I find

1 statistically significant negative abnormal returns
2 on June 16th and July 12th.

3 Q And so, again, your opinion referring back
4 to Paragraph 7, that second clause, what you're
5 really talking about is your opinion about the
6 Wells Fargo environment making it difficult to
7 determine whether those disclosures are actually
8 responsible for the stock price declines as a
9 measure of investor's harm.

10 Is that an accurate way to say it?

11 A Put it this way: I certainly agree that
12 the Wells Fargo environment is a factor that has to
13 be considered here. That it has created a
14 heightened awareness and potential concern about
15 consumer-based companies, so I agree with that.

16 That said, I think the -- there's also a
17 more general concern here about the idea that can
18 the filing of a lawsuit with allegations, is that
19 itself truly a corrective disclosure, you know, or
20 is that simply -- even if we all agree, oh, that
21 moved the stock price, that people were worried that
22 oh, my gosh, a \$12 billion lawsuit, what if that's
23 even ten percent likely to be true, you know, the
24 stock could go down.

25 But that's not the same as revealing the

1 FRIDAY, APRIL 24, 2020;
2 12:55 P.M.
3
4

5 BRUCE DEAL,
6 having been previously duly sworn by the reporter,
7 was examined and testified further as follows:
8

9 THE VIDEOGRAPHER: Okay. The time is now
10 12:55 p.m. and we are back on the record.
11

12 EXAMINATION (resumed.)

13 BY MR. BLATCHLEY:

14 Q Mr. Deal, I'd like to just start by I think
15 clarifying something you had said earlier, making
16 sure I have a correct understanding of what you were
17 saying.

18 So the question I have is is it necessary
19 to have a statistically significant increase in
20 price in order to show price impact?

21 A That's an -- that's an interesting
22 question. I think -- my experience is in practice
23 that it's not necessarily a requirement but it's the
24 most common starting point in a situation, like in
25 this case on the up side of inflation, looking for

1 increases, obviously on the down side of the
2 corrective disclosures.

3 It certainly is a theoretical at least
4 argument that, you know, the inflation or the
5 statement itself might have otherwise inflated or
6 otherwise deflated the stock price, but other
7 factors caused it to go the opposite direction so
8 you don't observe it.

9 That -- I mean, conceptually that can
10 certainly happen. There's no, you know, kind of
11 theoretical problem with that.

12 I think, again, my experience is as a
13 practical matter that's very, very difficult to show
14 and to identify that, so I wouldn't rule it out as a
15 possibility, but, again, as a practical matter I
16 find that to be typically a starting premise for any
17 price impact analysis.

18 Q Okay. So the starting premise is not a
19 requirement; is that right?

20 A I certainly don't think it's a legal
21 requirement, necessarily, although I think
22 there's -- some of the cases that I'm aware of seem
23 to be suggesting that if you can't show price change
24 in the perspective direction, that itself is -- I'm
25 paraphrasing, strong evidence or whatever on it.

1 But I'm speaking more from a theoretical
2 perspective, you can imagine news that otherwise
3 would if it was the only thing known caused the
4 statistically significant increase or decrease, and
5 if there's a perfectly offsetting other information
6 theory, I think in practice that's very hard to do.

7 Q So I guess I'm asking a little different
8 question. Say the example that you just mentioned,
9 the offsetting information, it's certainly
10 possible -- or would you agree that it's possible
11 that you could have a false statement together with,
12 I guess we'll call it confounding information or
13 some other statement that offsets the impact that
14 the statement would otherwise have, would you agree
15 that that's a possibility?

16 A Yeah. I think it's at least a theoretical
17 possibility, sure.

18 Q And in that scenario you wouldn't expect to
19 see a statistically significant increase in stock
20 price?

21 A Not given the hypothetical you just said,
22 which is a sort of perfectly offsetting news in the
23 opposite direction. Almost by definition that
24 wouldn't occur. So the real challenge, of course,
25 is how do you identify the fact that the news that

1 you're focused on would otherwise have caused it.

2 It's a form of the same issue that we've
3 been talking about of parsing out. It's kind of a
4 in your face form of it in that if there's not even
5 a statistically significant movement in the expected
6 direction, I find again as a practical matter that
7 sets the bar awfully high and I don't see anyway in
8 this case it could be overcome.

9 Q So here's what I want to go through. So
10 it's certainly a theoretical possibility, as you
11 just said, that if you have offsetting information
12 you wouldn't expect to see a statistically
13 significant increase in the price even though there
14 would be price impact, correct?

15 A Yeah. Before I answer the question, you're
16 a little quiet to me. I don't know if you are to
17 other people. I don't know if there's a way to get
18 a little closer to the mike.

19 Q Let me -- sorry. Let me -- is this better?
20 Can you hear me?

21 A Yeah. I can hear you and that is a
22 little -- a little bit better for me. Thank you.

23 But I think your question was with the sort
24 of -- you know, is it possible that there's price
25 impact given the presence of offsetting information

1 effectively. I think it's a -- if I understand the
2 question it's essentially the same question, to say
3 could there be -- if you had a method that you could
4 identify that had this news come out on its own, it
5 would have had a price impact, but, again, it was
6 offset by some other information there, again,
7 theoretically, sure, I think that's possible.

8 And in that case, I don't know the case law
9 so there's a -- there's sort of another branch of it
10 but from a legal standard of what -- and I can't
11 really speak to that, but as an economic proposition
12 it's at least theoretically possible.

13 Q Got it.

14 Okay. So, again, let's just maybe take
15 your contract example, right. You're talking about
16 you falsely announce a contract and that causes the
17 stock to go up. Say the next quarter you say the
18 contract is doing just fine, right.

19 In that example there's a false statement,
20 right? You're with me on my hypothetical?

21 A Yeah. The premise is that there really
22 never was a contract, as I understand your
23 hypothetical.

24 Q Right. Yeah.

25 And, you know, the company reports results

1 that are totally in line with expectations. In that
2 scenario you wouldn't expect to see a statistically
3 significant stock price increase, would you?

4 A I think what you're describing is sort of
5 what sometimes people refer to as a price
6 maintenance sort of situation, where if there was
7 some initial inflationary and you kind of repeat the
8 same information effectively, we wouldn't
9 necessarily -- it's not new news to the market at
10 that point in time, so we wouldn't expect that news
11 on its own -- to the extent it's essentially just a
12 repetition of previous expectations, I wouldn't
13 expect that to move the price, if that's your
14 question.

15 Q And so we'll take that.

16 And then the next example is an event,
17 let's say, building on kind of the first
18 hypothetical, you know, the next -- the next
19 quarter, you know, analysts have their estimates,
20 and you have the contract that doesn't exist, but
21 the company also truthfully discloses that its like
22 major manufacturing facility has this huge fire and
23 the stock -- would you expect in that case, this
24 negative information, could have a, you know --
25 could decline -- could cause a stock price decline,

1 even a statistically significant one, and there
2 could still be price impact?

3 A Let me just repeat that. So I got the fire
4 part of the hypothetical. Are you saying on the
5 same day they also disclosed that -- when they
6 disclosed the truth that they never had the
7 contract?

8 Q No. They're lying about the contract
9 again.

10 A Well, I guess -- I think it's sort of back
11 to the same example. I think what you're describing
12 is a form of the price maintenance, that with the --
13 with the fire it goes down and you expect that to go
14 down, but for that there's not, let's say in a
15 perfect world you're able to figure that out. Okay.
16 That's the only thing that moved it and it moved it
17 exactly what you would expect and therefore --

18 Again, I think it's price maintenance. To
19 the extent there's a price impact, again, I think
20 you're sort of stepping over the line a little bit
21 into legal territory a little more than economic
22 territory.

23 I mean, I agree as an economist that had
24 you disclosed that you didn't have a contract, we
25 would expect it to go down. You repeated the same

1 false information so nothing happened. It wasn't a
2 change in expectations. Whether that qualifies as
3 quote/unquote price impact is I think essentially
4 kind of a legal question. But, again, I agree that
5 but with different news the price could move.

6 Q And, again, I guess just so I'm clear, you
7 agree to the premise that -- I don't want to comment
8 with counsel that you could have a significantly
9 significant decline, say the fire example, you could
10 introduce another false statement on that date, say
11 we got another new contract, when you really didn't,
12 and the overall price decline could be statistically
13 significant in a negative direction, but there could
14 still be price impact based on that false statement.

15 Do you agree with that?

16 A I think I followed your -- your somewhat
17 increasingly complicated hypothetical, but I think
18 you're stating it as clearly as you can state it so
19 I'll give you credit on that.

20 Again, I think the answer is yes, in that
21 what -- the challenge, of course, is being able to
22 identify and measure that price impact. But from a
23 conceptual perspective, you know, super bad news
24 that dropped the stock price, combined with a lie
25 that should have increased it by a bit, you know, it

1 may be kind of initially mapped in there by the big
2 drop, but one has to propose a method to actually
3 show how you would parse that apart.

4 I think it's easy to just sort of
5 theoretically say that that's true. It's very
6 difficult to actually do that. But I don't
7 disagree, it's conceptually possible.

8 Q Okay. And like you just mentioned, it's
9 very -- or you were saying it's difficult to parse
10 those different effects out, and that's not
11 something you attempted to do here in your report,
12 right?

13 A I certainly didn't attempt to literally do
14 the parsing and quantify that.

15 I did do things related to that as we
16 talked about to identify the confounding information
17 on days I did -- again, I did do the initial event
18 study to identify kind of the starting point of how
19 many days even went up, versus these four it went
20 down, which is eight, versus which no significant
21 change, which is the remainder, so all these things
22 speak to that but I didn't literally do the parsing.

23 Q Okay. And just one last point. I think
24 you're going to agree with it. I don't think it's
25 controversial. Suppose in our, again, hypothetical

1 example we falsely mask the contract on day one --
2 let me try something else. Bring us back to our
3 contract example.

4 Say my contractual partner, Company B,
5 announces -- falsely announces that we got a
6 contract and Company A, our company, that we were
7 talking about, their stock inflates in response to
8 that news. And you have the next quarter
9 Company A -- let me just do this again.

10 Company A affirms the false contract. You
11 wouldn't expect a statistically significant increase
12 in price in that example, would you?

13 A I think the answer is I wouldn't expect it,
14 but just to make sure I get your hypothetical, your
15 partner announces it, you don't deny it in quarter
16 one, both -- both stocks go up.

17 The next quarter you again -- you may
18 affirmatively say yeah, I mean, it's a lie but you
19 say yeah, we do have this contract out there.

20 Q Yeah.

21 A With the market having already
22 quote/unquote baked into the price --

23 Q Yeah.

24 A -- the expectation that you got it, I
25 wouldn't expect to see an incremental change unless

1 there was some -- it was a bigger contract --

2 Q Right.

3 A -- or something like that, but if it's just
4 literally a repetition of the news, even if they
5 didn't make the original false statement but didn't
6 make the denial of it, the market may well have
7 learned of it that way.

8 Q Okay. So let's say in our hypothetical --
9 I'm trying to think.

10 So we have -- we have a contract and we
11 truthfully have the contract and we announce the
12 contract. And the following in between quarters the
13 contract is broken by our partner and it turns out
14 they're suing us.

15 It's a total disaster and we're filing our
16 annual report the next quarter, and it requires us
17 to disclose literally that fact and we don't say
18 anything, would you expect a material increase in --
19 I'm sorry, a statistically significant increase in
20 price based on that omission?

21 MR. BLAIR: Object to the form.

22 THE WITNESS: I -- I think I understand
23 your hypothetical. I think you meant decrease but I
24 understand the point.

25 It's sort of you have the truth. This

1 contract has fallen apart. You're positing a legal
2 obligation to tell people that and you don't. I
3 wouldn't expect at that point -- the market is still
4 operating under the understanding that you do have
5 it until you actually disclose it, so I wouldn't
6 expect it to drop until somehow it's disclosed.

7 BY MR. BLATCHLEY:

8 Q And in that impact the false -- sorry, the,
9 I guess, the actual admission would have a price
10 impact, it just wouldn't be reflected as a
11 statistically significant increase in price?

12 A Again, under your hypothetical you would
13 never expect an increase in price. I think you're
14 talking about the opposite, a decrease in price,
15 right.

16 Q I was -- I think we might be passing each
17 other.

18 No. That's the point. It's not -- I'm
19 talking about the impact from the false statement.

20 A I thought in your statement it was the
21 market knew we had a contract, the contract falls
22 apart. When the market learns the truth of that, I
23 expect the stock to drop.

24 Q Yeah. Sorry. Let me clarify.

25 We have the contract. We truthfully have

1 it. We announce it. Our stock price has gone up.

2 A Yeah.

3 Q During the quarter the contract falls
4 apart. It's a disaster. We're required to disclose
5 those facts in the following quarter. We don't
6 disclose those facts. Okay.

7 A Right.

8 Q Would that failure to disclose, that
9 omission, be expected to cause -- all else equal, be
10 expected to cause a significant increase --
11 statistically significant increase in price?

12 A I think the answer is no. I think the way
13 you're phrasing that -- it's sort of if they had
14 done what they were supposed to do, it would have
15 gone down? It does go down but you're asking do I
16 expect it to go up, no, I don't expect it to go up
17 in that case because it's essentially not changing
18 the mix of information.

19 Q And you're saying -- again, the premise of
20 a lot of your opinion is that there's a physical be
21 it quantifying or measuring that mix of information.

22 Is that a fair statement?

23 A I certainly agree with that, that there's a
24 lot of information. You have alleged 55 days of
25 inflation, 52 of which where they expected to move

1 adds -- that in and of itself is a challenge in this
2 case to which there's nothing in the damages model
3 that would deal with that.

4 Q So let's talk about the fear, uncertainty
5 and doubt for just a second.

6 Can you tell me where that comes from?
7 What does that mean?

8 A Well, the first time I heard it was very
9 early in my career in some of the Microsoft
10 litigation where the competitor might try and create
11 a fear, uncertainty and doubt about a competitor's
12 product, for instance. Our word processor is great.
13 You know, theirs has all kind of problems. There so
14 you're kind of creating -- the first I heard of this
15 acronym FUD, F-U-D, and -- but it was in this
16 environment of, you know, I'm not sure if they're
17 really going to be able to make their release, this
18 new version, or will it fix the bugs, will it do
19 those kind of things.

20 So it stems from that. But I think it's
21 appropriate to think about it in this case as well,
22 where Wells Fargo, I think, as they made actual
23 disclosures of fines being paid, things like that, I
24 think it's fair to say it was a significant issue at
25 Wells Fargo.

1 And in that environment if one sort of
2 creates an atmosphere to say this might look like
3 that, meaning this situation might look more like a
4 Wells Fargo, that would be using that situation and
5 the uncertainty around it, well, maybe it is, maybe
6 it isn't. Boys, if it's that, that's going to be
7 bad.

8 It's that environment that -- and I think
9 that's pretty clear in this case, that when I look
10 at the actual press releases, when I look at your
11 Complaint, there's a lot of references to Wells
12 Fargo in there.

13 In my experience that would be, you know,
14 kind of equivalent to where I first saw this decades
15 ago.

16 Q So let me just follow up on a few points
17 there. The context in which you saw -- you're
18 referring to Microsoft. Is that like the Microsoft
19 antitrust matters? Am I right about that?

20 A Yes.

21 Q And just to be clear, that wasn't in the
22 context of loss causation in a securities class
23 action, right?

24 A I certainly agree with that. I mean, I
25 don't recall whether there was any securities class

1 action as part of that. I didn't personally work on
2 any of those if there were.

3 But it's a much broader concept than
4 something that's specific to securities class
5 action, that's for sure.

6 Q Yeah. I'm just not familiar with it.
7 So, you know, it's helpful for the
8 explanation. Again, it's in the antitrust context
9 that you first learned of this term, and in that --

10 A Well --

11 Q Yeah. I'm trying to see what it means in
12 terms of securities practices, because I've never
13 heard the term used in connection with securities
14 practices.

15 A Yeah. I mean, to be clear it's not an
16 antitrust specific term by any stretch.

17 Q It's usually -- yeah.

18 A It may have come up in those antitrust
19 cases as part of what are the competitive or
20 allegedly anticompetitive practices of Microsoft.
21 But it's a much more general concept of either
22 creating fear, uncertainty and doubt, which was at
23 least the allegation in Microsoft, that they
24 affirmatively created these -- this environment.

25 It would be as if your firm -- and I don't

1 recommend you doing this, and I'm not suggesting
2 that you do it, but if you were to say oh, Cooley,
3 those guys aren't going to be around for very long.
4 They got some really terrible attorneys, or I've
5 heard that -- you know, it's that sort of, you know,
6 kind of rumors or fear just kind of creating this
7 environment where then you are able to capitalize on
8 that.

9 I'm not alleging -- I'm not alleging. I
10 sound like a lawyer. I'm not suggesting that, you
11 know, you as the plaintiff lawyers or whatever had
12 anything to do with Wells Fargo. But that's an
13 example of an event that will create an environment
14 of fear, uncertainty and doubt, even if it's not an
15 intentional -- initially an intentional direction at
16 CenturyLink.

17 I do see, based on kind of the equivalency
18 in the tech industry where FUD starts, I do see some
19 equivalency in the way the headlines seem to have
20 come out, the press releases, things like that, an
21 attempt to really tie the allegations in CenturyLink
22 regarding, you know, cramming as we've been
23 describing it, to the Wells Fargo situation.

24 So it has analyses there of this might well
25 be that, or here's a potential \$12 billion lawsuit.

1 So I do think that there's some real analogies
2 there. But it's not something that one would
3 necessarily expect to see. It's not specific to
4 antitrust. It's not specific to securities class
5 actions. It's more of a general phenomenon.

6 Q So -- and again, the Microsoft context is
7 Microsoft was going around creating this
8 environment, and that was an anticompetitive thing
9 that they did wrong in that case?

10 A I don't remember how those specific
11 allegations got resolved. I mean, there were lots
12 of things in the Microsoft case, so it was part of
13 the mix of what are the tactics that Microsoft is
14 doing and what of those are legitimate.

15 But I would also say it wasn't only a
16 Microsoft tactic. It's something that, with all due
17 respect to my brother here in Silicon Valley, it's
18 something that's been done a long, long time in
19 tech. It's a very common situation.

20 And it's not just limited to tech, too, but
21 if you can create some FUD out there -- and even if
22 you didn't create it, if you can capitalize on it,
23 so, you know, let's say some third law firm failed
24 and it's like okay, well, that creates a whole worry
25 environment, again, if you can kind of capitalize

1 that on by suggesting that somehow, you know, Cooley
2 or whoever is more like that, that would be a way of
3 you not creating the FUD environment, but perhaps
4 trying to capitalize on it.

5 Again, this is all completely hypothetical
6 to be clear on the record.

7 Q Yeah. I'm just trying to say, because this
8 concept is kind of, you know, a key part of your
9 report and I'm trying to understand it.

10 So you're not saying plaintiffs created
11 this environment, right? That's not what you're
12 trying to say?

13 A I agree with that. The environment was
14 really created by Wells Fargo presumably, you know,
15 whatever -- potentially their actions but certainly
16 we observed with Wells Fargo in my limited
17 experience and my reading of the press reports and
18 things, and I cite a little bit in my report, I
19 mean, they paid very large fines, for example.

20 And I understand that they reported, you
21 know, large layoffs of people. And, I mean, I think
22 it's fair to say it was a real thing at Wells Fargo
23 there. So I don't have any reason to think that,
24 you know, lawyers of any sort created that.

25 But it did create a different environment

1 before and after that suddenly the question of is
2 this limited essentially to Wells Fargo or is this
3 something that's much more widespread and we should
4 have broader concerns.

5 Q So have you -- is there academic research
6 quantifying this concept that you're taking from
7 these other context?

8 A I'm not sure what even you mean,
9 quantifying. You mean describing FUD as a concept
10 and how it can be used in an anticompetitive way?

11 Q Yeah. Or measuring it.

12 A Certainly I -- again, I can't cite as I sit
13 here right now, but I know that there -- well, to
14 the best of my recollection there was and there is,
15 therefore, existing research in -- as I recall in
16 the context of Microsoft and some of these kind of
17 antitrust issues that FUD is something that is
18 explored in the research.

19 I can't cite specific papers and things
20 right now but I have a recollection that it's a
21 topic that's explored.

22 I'm not sure what exactly you mean by
23 "quantified." I mean, I'm not sure how one would
24 exactly quantify it as you're describing. I mean,
25 it's a measure.

1 So -- but it certainly -- it is something
2 that, again, to the best of my recollection the
3 researchers and others have -- have analyzed in
4 various contexts.

5 Q So maybe this is a better question.
6 Outside of the Microsoft experience that you
7 described, have you studied FUD? Like is that
8 something that you're holding yourself out as an
9 expert on?

10 A I'm not sure that one ever thinks of
11 studying FUD specifically. I certainly have had
12 that -- I certainly had the concept of FUD. I -- I
13 definitely analyzed that in other cases. Again,
14 it's a pretty common aspect in the technology
15 environment. I can't necessarily think of the
16 specific cases --

17 Q Yeah.

18 A -- where it's come up. But I'm
19 underscoring the fact that it's not -- I mean, I
20 appreciate the fact maybe it's a new concept in your
21 experience there, but in terms of is this something
22 that, you know, almost anybody in the technology
23 industry, for instance, back in the '90s and since
24 then, if you said oh, you know, look at that FUD,
25 you know, that Cisco is spreading or whatever, I

1 it somehow paints a reputation of the company.

2 Q So, again, turning back to our disclosure,
3 again, on June 16th, you're saying that the FUD is
4 at some level responsible for the cause of the
5 decline. Is that -- is that right?

6 A Close, I think. I'd say this post Wells
7 Fargo -- and by "post Wells Fargo" I mean after some
8 of at least the initial information about Wells
9 Fargo was coming out, I think it's fair to say that
10 that increased the concern or potential concern by,
11 you know, customers, investors, others, about, you
12 know, kind of issues associated with unauthorized
13 charges or accounts or variations of that.

14 So the environment is -- has this situation
15 in it, this FUD situation in it, and I think that
16 when I view the stock price reaction and I
17 understand the context and I look at the analysts'
18 feedback, it does -- it is consistent to me with the
19 market -- the heightened uncertainty because the
20 market was aware before this of general allegations
21 of cramming as we've talked about.

22 I think it does explain the environment in
23 which we observe stock price decreases as the market
24 would be concerned about that. Then when I look at
25 the analysts' response to it, I see many of the

1 analysts themselves saying this seems like it's a
2 reaction to, you know, concerns about Wells Fargo
3 and uncertainty. We don't see it -- many of them
4 saying we don't see it as being a big deal
5 necessarily. I'm obviously paraphrasing. They
6 don't use those exact terms. Or as significant, or
7 what would be consistent with the type of decline in
8 stock price.

9 So I view it as why do I see a pretty
10 significant stock price decline, even setting aside
11 other news. If one just accepts the simple premise
12 that it was associated with that, why would that be.
13 I see the FUD environment out there and to me that's
14 consistent with it.

15 But, again, it's a broader -- it's a
16 broader concern of just the fact that these are
17 lawsuits anyways, so even if it didn't move as much
18 as it did, it could still be a concern. But I think
19 the FUD helps explain the environment in which one
20 does observe an increase and some significant
21 decreases.

22 Q Again, it's one of the contributing causes
23 of the decline in the FUD environment?

24 A I think that's a fair statement, yeah, that
25 I think that the FUD environment is -- it allows one

1 to understand what otherwise might not have caused
2 as big a stock price decline, why do we observe as
3 big a stock price decline as we do on those days, so
4 I think that's fair.

5 Q And your opinion is, you know, the FUD kind
6 of environment didn't cause the stock price decline
7 prior to June 16th, right?

8 MR. BLAIR: Object to the form.

9 THE WITNESS: Well, I haven't studied that.
10 I focused on the days that were in your Complaint.
11 I'm not aware of other dates, put it this way,
12 where -- where you could point to it and say, you
13 know, that stock price decline seems to have a
14 similar pattern. It plays into existing concerns
15 about, you know, cramming and the Wells Fargo type
16 allegations. I'm not aware of any but I haven't
17 really studied it.

18 BY MR. BLATCHLEY:

19 Q Maybe I'll ask it differently. Other than
20 FUD you haven't identified any other confounding
21 information on any of the three disclosure dates
22 that you believe caused the decline?

23 A If I understand your question, you're
24 saying that the three disclosure dates that you're
25 alleging that I've studied here, the question is

1 what other confounding information is there.

2 I haven't studied that question in detail.

3 I'm not -- I don't -- they're not earning disclosure
4 dates so they don't have the same kinds of issues
5 as, you know, many of the dates on the inflationary
6 side.

7 There may be other things on those days as
8 well, but I haven't studied that in detail. I'm not
9 aware of a significant number. I think -- I do
10 see -- especially on the first and the third day,
11 when I look at the intraday information, you know, I
12 do see a connection -- let's take the first day
13 between when this news comes out and the intraday,
14 prices do seem to decline.

15 So I don't dispute that there's a likely
16 connection between those two, and it's not that
17 there was also, oh, our plant blew up that day. I'm
18 not aware of any of that type of confounding
19 information.

20 I think that was your question, Mike,
21 wasn't it?

22 Q Yeah.

23 And just speaking of your intraday
24 analyses, you even pulled news articles on those
25 dates. And, I mean, you can let me know if I'm

1 common in securities cases. As you're saying,
2 well -- I mean, you know, you could imagine a
3 pattern that would say the stock dropped in the
4 morning because they said my plant blew up, and then
5 when this news came out, nothing changed.

6 So you typically want to look at the
7 intraday saying -- as I recall, Dr. Hartzmark
8 himself looked at intraday things as well just to
9 say we expect the information to be confounded in
10 the stock price quickly and, A, is it, and B, is
11 there at least -- you know, can one not dismiss out
12 of hand to put it in a negative that this is the --
13 this is related to it.

14 And I agree, I certainly can't dismiss out
15 of hand that these -- the press releases about the
16 lawsuits do seem to have directionally had some
17 impact on the stock price. Again, there could be
18 some other confounding things in there but this
19 pattern to me is suggestive that, you know, we can't
20 just -- we can't rule out these. And it's --
21 anyway...

22 BY MR. BLATCHLEY:

23 Q So thank you for that.

24 So one of the things I think you already

25 mentioned is that you look at analyst reports, and

1 in, you know, assessing whether an analyst report
2 would be helpful to your analysis of the stock price
3 reaction, I assume you'd want to understand the
4 content of those reports; is that right?

5 A Sure. I mean, I think that's a very
6 general statement, if I understand it.

7 Q Right. It's not just the fact that there's
8 an analyst report, but it's what the analyst report
9 actually says that matters, right?

10 A Yeah. I certainly -- I mean, I think -- I
11 agree with that. It sounds right to me. I mean,
12 just the fact of an analyst report isn't
13 particularly informative in and of itself.

14 Q Right. And so I think we're on the same
15 page.

16 So it's also -- like you do analysis
17 elsewhere about price targets, and you would agree
18 with me that it's appropriate -- again, I'm talking
19 about the content of the analyst's report -- the
20 reasons why an analyst changes their price target is
21 important.

22 Would you agree with that?

23 A Sure. And, I mean, I have that discussion
24 in my report itself. I've analyzed those questions
25 saying well, A, I don't see very many price changes,

1 which itself is informative, but where I do see
2 price changes I dig a little deeper to say okay,
3 well, what are they saying.

4 Is it because they say I see a lawsuit is
5 filed the stock price dropped, I got to believe that
6 lawsuit is almost certainly true, and therefore it's
7 going to affect future cash flows, or what are they
8 saying around that.

9 Are there other things that have caused
10 them to change their price target. Are they noting
11 a lawsuit, but what are they crediting in terms of
12 the likely underlying substance to it or what's the
13 effect of it. So absolutely I agree with that and
14 that's what I've done.

15 Q So -- okay. And you would also agree, I
16 think, then when you're looking at this kind of --
17 this two-day window context that we're talking
18 about, any statements by the company itself; is that
19 right?

20 A I'm not entirely sure what you mean, but
21 you confused me with the two-day window thing in
22 there. You're -- I mean --

23 Q Yeah.

24 A -- I agree the company statement could be
25 relevant but I'm not sure what it means by the two

1 day.

2 Q It means when you're assessing what caused
3 the, you know, stock to react on these two days, the
4 16th and the 19th, statements by the company would
5 be something you'd want to consider?

6 A Sure.

7 Q Okay. And so --

8 A I certainly agree that statements by the
9 company could be relevant, if it's a general
10 question like that.

11 Q Yeah. I think it's even a specific one. I
12 mean, you said analysts and what they said would be
13 important. I understand that analysts mostly get
14 their information from a company.

15 Would you agree with that?

16 A No. I don't think that's true. I agree
17 analysts often get a lot of information from
18 companies, but at most -- I guess it depends on how
19 you consider -- what you define as "most."

20 Certainly they would get information about
21 financial data that's typically coming from the
22 company, so in that sense it's most. But it's also
23 very true that analysts -- one of their big claims
24 to adding value is that they're not just parrots
25 receiving what the company told them; otherwise,

1 they would presumably not add any value.

2 So they're talking to customers, they're
3 doing other kinds of things frequently, so they get
4 lots of information from the company but it's
5 hopefully in some sense not just the company.

6 Q And it's hopefully -- I mean, you would
7 agree they're not going to ignore what the company
8 would say, right?

9 A Not going to what?

10 Q Ignore what the company might say.

11 A Well, that's a little harder question to
12 answer because I've certainly seen situations where
13 analysts were quite clear they didn't think that
14 management had any credibility and they were
15 ignoring what management was saying. I suspect
16 you've been involved in some of those cases as well.

17 But as a general matter, I agree with that.
18 That they -- unless there's sort of some unique
19 circumstance, they typically would, you know, at
20 least see what management is saying.

21 Q And certainly, again, the company's
22 statement is not irrelevant to assessing a stock
23 price decline in response to the corrective
24 disclosures?

25 A I certainly don't think it's irrelevant as

1 a concept. Whether or not it -- you know, if it's a
2 specific matter and a detailed matter, you know, the
3 mix of information all those kind of things, but as
4 a general concept you can't dismiss it out of hand.
5 I agree with that.

6 Q Do you -- do you believe it's irrelevant
7 here?

8 A You mean company statement?

9 Q Yes.

10 A Again, not -- not out of hand. Are you --
11 if there's something else specific you're thinking
12 about, I'm happy to look at it or something, but...

13 Q Okay. What about in assessing, you know,
14 again, we're talking about this two-day window issue
15 and what's, you know, causing the stock price to
16 decline and, you know, what's appropriate to look
17 at.

18 Would it be relevant to you to consider
19 anything that, say, the investor relations personnel
20 at the company itself were saying about the reasons
21 behind the stock price decline?

22 MR. BLAIR: Objection to form.

23 THE WITNESS: I -- I feel like you're
24 dancing around something that you just want to show
25 me. If you want to just show it to me, I'm happy to

1 look at it. But I'm not -- out of hand you
2 obviously can't dismiss that. That it's always
3 irrelevant, no, it's not always irrelevant.

4 BY MR. BLATCHLEY:

5 Q Would it be important to you?

6 MR. BLAIR: Same objections.

7 THE WITNESS: Again, it really depends on
8 what's -- what's in it and other things. It's hard
9 to make such a blanket statement. It's not
10 irrelevant.

11 BY MR. BLATCHLEY:

12 Q What about let's say a major investor, like
13 one of the top, you know, investors in the company,
14 let's say they make a statement or, you know,
15 disclose a position of that, would that be something
16 that's important for you to consider?

17 A Again, you're asking such general
18 questions, I'm not sure, Mike, if one could answer
19 them. They're not -- I mean, one never sort of just
20 dismisses out of hand that, but, you know, it really
21 depends on what it is. I mean, just the fact that
22 someone took a big position in a company, I mean,
23 that may or may not be interesting or important.

24 Q Again, I think what we're talking about is
25 when we're doing this analysis of what's causing the

1 stock price to decline, you've been saying that
2 there are some things that you'd want to look at
3 which are the analyst reports, we've agreed on that.
4 You said it's potentially relevant what the company
5 says.

6 Would you want to consider, you know, like
7 a five percent holder makes a statement or discloses
8 a position, would that be something you'd want to --
9 if that happens during the time period we're talking
10 about?

11 MR. BLAIR: Objection to form.

12 THE WITNESS: I'm not trying to be evasive
13 or dismissive. I just -- you can't make sort of
14 just some blanket statement. And I'm not trying --
15 I'm certainly not doing any kind of a microanalysis
16 of oh, this news story moved it this much, that
17 moved it that much, all of that. But the broad
18 facts I think are not in dispute here.

19 There were lawsuits filed. The stock price
20 moved. It moved quite quickly initially. It didn't
21 move statistically significantly on the 19th, so I'm
22 not sure -- it's like you're -- anyway, I'm not
23 quite sure where you're going with this and I'm a
24 little confused honestly.

25 \\\

1 BY MR. BLATCHLEY:

2 Q You know what a 13D filing is, right?

3 A Yes.

4 Q And it's for, you know, you get
5 five percent of the company, you have to disclose
6 your position and a couple other things. Is that
7 fair?

8 A That's -- yes. That's my understanding.

9 Q And are you aware of academic literature
10 addressing stock price reactions in connection with
11 13D filings?

12 A Again, same answer as before, that I'm not
13 going to be able to quote you specific papers, but
14 that's absolutely the kind of things finance guys
15 love to study.

16 Q And generally there would be a positive
17 impact upon the filing of a 13D according to those
18 studies?

19 A I'd have to look at the -- I'd have to look
20 at the literature and see. I mean, I'm not -- I
21 think it kind of depends on who's taking the
22 position and why and those sorts of things, so I'm
23 not sure you can make it a simple statement.

24 Q That's fair, but it could have an impact on
25 price reaction?

1 A When you say "have an impact on price
2 reaction," I think what you're asking is could the
3 fact that they disclosed hey, you know, Carl Icahn
4 is taking a five percent position in the company, is
5 that the sort of thing that might move the stock
6 price, yeah, I think it could, if that's your
7 question.

8 Q So let me just turn to, I guess I want to
9 look at 30 -- 31B. I think it's probably easier
10 this way.

11 A I'm there.

12 Q I'm sorry, guys. I just need a minute.

13 A I do have the paper copy if you want to
14 just refer to that.

15 Q So I'm looking at your -- you've got one,
16 two, three, four -- you've got 6/19 Insurance
17 Information Institute Database. Do you see where I
18 am?

19 A When you say -- do you want me to be
20 looking at --

21 Q I'm sorry. Yeah. Hopefully I'm on the
22 right thing. I'm on Exhibit 31B. Are you with me?
23 I'm sorry.

24 A Almost. I'm just getting my -- okay. All
25 right. I'm on 31B, yeah.

1 Q And just looking down -- again, let me just
2 back up one second, did you read all these articles
3 before they went into the report or was this
4 something handled by the staff?

5 A Primarily the staff, under my direction.

6 Q Okay. So you've got -- you've got these
7 disclosures June 19th, 2017 at 9:02, the Morgan
8 Stanley analyst report?

9 A Yes.

10 Q And then after that you've got the
11 June 19th, 2017, 9:40 Denver Business Journal Online
12 news article?

13 A Yes.

14 Q So I don't know if I've done this correctly
15 but I just introduced -- or I tried to introduce.
16 Let me know if you get it -- Exhibit 31 which has
17 been marked for the record.

18 A I do see it. Congratulations on that.

19 Q So just looking at that -- yeah. Sorry.

20 A Hang on a second. It's just spinning here.
21 Wait. There, it's coming up. Okay.

22 (Deposition Exhibit 31
23 was marked for identification.)

24 BY MR. BLATCHLEY:

25 Q So I just want to direct you, the time

1 stamp or at least the one that we've -- this is the
2 document that you've produced, this is at 9:30 in
3 the morning Eastern time on the 19th.

4 A Okay.

5 Q I just didn't -- I didn't see it in your
6 31B or your exhibit on the 19th of 31A. And let me
7 know if I just missed it, but then I just want to
8 ask you a couple questions about it.

9 A As I sit here right now I don't see it on
10 the list.

11 Q So it's fair to say that that article is
12 not in this exhibit either, you know, referenced as
13 part of the -- you know, one, two, three, four,
14 five -- I mean, I assume, and let me know if I'm
15 wrong, the articles listed in 31B, are those
16 referenced in 31A on the chart?

17 A Yes. I think that's accurate.

18 Q Okay. So this Bloomberg article --

19 A Sorry. Just to be clear --

20 Q Yeah.

21 A -- there are -- oh, 31A is just the
22 intraday trading on the 19th. 31B includes articles
23 from the 17th and the 18th as well, as well as like
24 before trading opens on the 19th, so there's more
25 listed on 31B than there are red dots on 31A.

1 Q Yeah. Yeah. And so I guess on 31A I just
2 looked at No. 4 on the notes and sources, which I
3 think explains what you're describing, which is one,
4 two, three, four, five are stories or reports
5 released the prior weekend or before market.

6 Is that -- are we on the same page?

7 A Yes. I think that's right.

8 Q Okay. So, again, going back to the
9 Exhibit -- what did we call it? -- 31, I guess. So
10 this is an article that -- do you understand that
11 this article is referenced in plaintiffs' Complaint?

12 A I'd have to double-check but it wouldn't
13 surprise me.

14 Q You understand that you've referenced this
15 article in your report, in other sections of your
16 report?

17 A I certainly recognize the 12 billion number
18 in it, so I'm happy to double-check but I'll take
19 your word for it.

20 Q And this, again, was referenced in the
21 Complaint -- plaintiffs' Complaint as one of the
22 articles in causing -- sorry, in the loss causation
23 truth emerges section?

24 A Again, I'll take your word for it.

25 Q Again, I just want to make sure. You agree

1 with me it's important to include when assessing --
2 again, I think you make a statement in your analysis
3 using this intraday price chart about the
4 reasonableness of the Complaint's allegations.

5 You agree with me that in doing that it
6 would be appropriate to consider what is alleged in
7 the Complaint?

8 A I'm not quite sure of your question.
9 Sorry. Maybe you could rephrase it.

10 Q Yeah.

11 This is alleged as, you know, a
12 corrective -- or review of corrective information.
13 Your analysis on the intraday price decline does not
14 appear to include it. And I'm just asking the
15 question why did you think it was appropriate not to
16 consider this article?

17 A Well, I mean, you just said that I cited it
18 at a place so obviously I have considered it. Your
19 specific question is why is it not listed on 31B? I
20 don't know. I'd have to go back and check on that.
21 But it certainly isn't changing any opinion.

22 Q Yeah. No. I'm just concerned because, you
23 know, you spend a couple paragraphs, 144 you're
24 saying a two-day window is inappropriate, you got
25 147 where you are talking about the model and the

1 decline on the 19th and why it's not appropriate to
2 consider a two-day window, and your support for that
3 is this exhibit about the intraday trading.

4 And I'm just wondering why we're not
5 talking about the article in the Complaint.

6 A Well, I think maybe you're misunderstanding
7 what we've been talking about for the last bit. The
8 support for a two-day window isn't based on how many
9 dots are on these charts or the specific price
10 movement of those.

11 It's based on a much more general
12 proposition that's reinforced by the intraday
13 analysis here, but it's not -- I mean, the
14 fundamental point is Dr. Hartzmark and I agree this
15 is an efficient market for the equity for
16 CenturyLink.

17 There is a statistically significant drop
18 on the 16th. There is not a statistically
19 significant drop on the 19th. I look at the
20 intraday news on the 16th and it does seem to be
21 moving in a consistent way with the framing, so I --
22 those all seem fine to me as far as they go to
23 suggest that the 16th one can't rule it out, but the
24 19th -- the idea that the two-day window is
25 somehow -- one would reach a different conclusion if

1 one had more dots or fewer dots or something like
2 that, that's not the point.

3 Q So -- and again, I'm sorry. I might have
4 given you the wrong paragraph. 164 is I think where
5 I was focused.

6 And, again, you said in these paragraphs
7 preceding 164 talking about the intraday price
8 analysis and how it supports your conclusion that
9 Dr. Hartzmark's blanket assumption that plaintiffs'
10 allegations will be shown to be true is not
11 supported. And I'm wondering why when we're talking
12 about plaintiffs' allegations you're not including
13 the articles that are clearly alleged in the
14 Complaint.

15 MR. BLAIR: Object to the form, asked and
16 answered.

17 THE WITNESS: I think I've answered this as
18 much as I can. You yourself have noted that I cite
19 this in my report. I don't dispute that it's in the
20 Complaint. It seems exactly consistent with, you
21 know, the general thrust of all of these corrective
22 disclosures that have been identified. It doesn't
23 change anything there.

24 So as to why it's not specifically listed
25 on that chart, I don't know, I'd have to go back and

1 look but it doesn't change anything. The chart is
2 intended to be illustrative of whether there's
3 anything in the intraday that would be inconsistent
4 with, you know, kind of the efficiency of the market
5 and therefore why one needs to think about two-day
6 windows, and I just don't see it.

7 BY MR. BLATCHLEY:

8 Q Okay. So in addition to the two-day window
9 you've also assessed -- you have some comments in
10 your analysis of the 7.6 percent bonds, right?

11 A You're now switching topics, is that right,
12 to the bonds?

13 Q I just want -- again, would it be
14 appropriate to not include this from your
15 consideration?

16 MR. BLAIR: Object to form.

17 THE WITNESS: Yeah. I mean, we clearly
18 have talked about the fact that I considered it.
19 You've noted that I don't see it on my 31B and I can
20 go back and look and see, but that certainly doesn't
21 mean it hasn't been considered.

22 And as I review it on the screen --
23 although the version I see on the screen seems to be
24 missing a bunch of letters, so it's kind of hard to
25 read a little bit, at least on my screen. But it

1 seems to be just a recitation of the same things. I
2 don't know if your version seems to be missing a
3 bunch of letters, too.

4 BY MR. BLATCHLEY:

5 Q Yeah. And I apologize for that. That's
6 the way it was produced to us. And I wish it was
7 better quality but that's what we have.

8 But, you know, there is here a statement
9 from the company. You know, it's -- again, it's
10 the -- the article that's, you know, discussed
11 extensively in the Complaint and the party's
12 submissions.

13 A I mean, that doesn't seem wrong to me, but
14 one only has to glance at 31B to see 12 billion, you
15 know, show up in many, many headlines. For
16 instance, the fact of the lawsuit was -- if you want
17 to point me to something that you think is unique
18 and new information in here, I'm happy to think
19 about that. But I just don't see anything that's
20 extremely relevant about this.

21 There's nothing relevant about -- the fact
22 that it's not on my 31B doesn't change anything.

23 Q So let me just turn back real quick again
24 to -- I'm sorry. 30 -- maybe it's on me. 30A and
25 30B. And what I wanted to do -- I'll just make the

1 simple point and maybe you can agree with me or you
2 won't. 30A has -- this is the intraday impact
3 analysis of June 16th.

4 A Okay.

5 Q And the last -- I'm looking at 17, I think
6 it's Page 184 -- I'm sorry, there's a series of
7 articles that are -- the last article with the time
8 stamp on here is 16:44, the Reuters story on
9 Page 183.

10 A Yes.

11 Q And then there's these additional articles
12 that we don't have a time stamp for, but they could
13 have been either published during the day or after
14 the close, correct?

15 A Yeah. I mean, I suppose -- I'm not sure
16 how one would figure it out. I suppose in theory
17 they could be published before the day, before the
18 trading day started. But they're certainly
19 published on that day, that's the way they are
20 dated, but they don't have a time stamp.

21 Q So and then Exhibit 31A, the one we were
22 just -- I'm sorry. 31B, the one we were just
23 looking at, you know, discussing the disclosures
24 over the -- over the weekend and then on June 19th.

25 A Okay.

1 Q So and I just wanted to -- you know, if you
2 could -- I don't know if you have it, but the
3 Complaint, which was previously marked as Exhibit 1,
4 I think it's in the folder. Let me know if I need
5 to resubmit it.

6 A Exhibit 1, the Complaint?

7 Q Yeah.

8 A All right. I have it.

9 Q Okay. Paragraph 157.

10 A It's revealing itself to me very slowly.
11 I'm getting there.

12 MR. BLAIR: Hey, Mike.

13 MR. BLATCHLEY: Yeah.

14 MR. BLAIR: We've been going about an hour.
15 Maybe while he gets there, maybe we take five, ten
16 minutes.

17 MR. BLATCHLEY: That would be totally fine.

18 THE WITNESS: I'm there right now. Do you
19 want to just finish this line of questioning and
20 then we can...

21 BY MR. BLATCHLEY:

22 Q Yeah. Well, this will take -- it's very
23 short. Paragraph 157, it talks about, the second
24 sentence, you know, articles published on June 16th
25 in Ars Technica and CRN.

1 I just wanted to point your, you know,
2 direction to those two articles, and then just get
3 you to confirm that neither of those two articles
4 are mentioned in Exhibits 31A or 30A, the ones that
5 we were just looking at.

6 A I think you mean 30B.

7 Q I'm sorry. Yeah. 30B and 31B. I'm sorry.
8 Thank you for that.

9 A I mean, I'll sort of take your word for it
10 in the sense I certainly don't see the source. But
11 the topic describe the sources that I used, which is
12 the Bloomberg sources, so I don't see Ars Technica
13 or CRN in the source. Whether or not those sources
14 are looking at other ones is I suppose a different
15 question, but I'll take your word for it they're not
16 listed.

17 Q So and I'll just -- again, I'll say those
18 are not articles included in your Appendix B; is
19 that right?

20 A I'm not seeing them.

21 Q And so you didn't read those articles in
22 coming to your conclusions -- or I'm sorry, your
23 opinions in the report?

24 A Wrong. I'd have to look and see if they're
25 in my list of docs considered. I mean, you quote

1 parts of them in here and I certainly relied on the
2 Complaint, but I don't recall specifically -- I'm
3 not sure if you're -- where exactly you're going
4 with these in the sense that no specific article
5 is -- they kind of make or break on any of these
6 sorts of points here. So I don't see the relevance
7 of the questions, but I don't see them listed on
8 30B, so I think that's technically true, I guess.

9 Q I'll make it easy. So it's fair to say you
10 did not consider those articles in your analysis and
11 your accompanying discussion referencing
12 Exhibits 30B and 31B?

13 MR. BLAIR: Object to the form.

14 THE WITNESS: I think I've answered that as
15 much as I can. I don't see them literally on the
16 list there. So I think that kind of speaks for
17 itself in the sense that they're not there.

18 Whether or not they were in some broader
19 search and then excluded, I don't have any reason to
20 believe that but I don't know.

21 But I didn't -- to the extent they're not
22 on the list, obviously in some sense they're not
23 considered. But neither is any specific article --
24 I mean, they're considered in their totality and an
25 illustration of the intraday trading, but it's not

1 as though the particular substance of any of them is
2 being analyzed for a particular impact on the stock
3 price. I think that would miss the point.

4 MR. BLATCHLEY: Okay. Should we take our
5 break?

6 MR. BLAIR: Let's do it.

7 MR. BLATCHLEY: Okay.

8 THE VIDEOGRAPHER: The time is 3:12 p.m.
9 and we are off the record.

10 (Off the record from 3:12 - 3:30 p.m.)

11 THE VIDEOGRAPHER: All right. The time now
12 is 3:30 p.m. We are back on the record.

13 BY MR. BLATCHLEY:

14 Q Mr. Deal, can you hear me? I'm sorry.
15 Just to -- is this okay?

16 A I think so. Can you say something else?
17 No. Not hearing anything.

18 Q Can you hear me now?

19 A Yes.

20 Q Sorry about that.

21 Mr. Deal, you're aware, and this in your
22 report, that Dr. Hartzmark is proposing an
23 out-of-pocket methodology for calculating classified
24 damages?

25 A Yes.

1 Q And you're familiar with the out-of-pocket
2 methodology?

3 A Yes.

4 Q Are you aware that it is nearly universally
5 used to calculate classified damages in securities
6 fraud cases under Section 10b?

7 A Yes. In the large. My quibble is not with
8 the idea of an out-of-pocket method. I agree that
9 that is typically how damages are calculated. It
10 has to do with everything else we've been talking
11 about today.

12 That just to say I'm going to use
13 subtraction and somehow there's going to be
14 inflation ribbon in my view is not sufficient.

15 Q And, again, you're not proposing to do
16 damages methodology of your own?

17 A I'm not proposing anything different from
18 out of pocket as a concept, no.

19 Q And so your criticism here -- and I know
20 there's a lot in your report, but let me try to boil
21 it down if I could.

22 One, you say the price decline in the
23 corrective disclosure dates really can't be used as
24 a measure of inflation because, I think, of two
25 reasons, there's no corrective information and this

1 whole FUD concept that you were talking about. Is
2 that -- is that fair?

3 A I mean, that's -- that's part of it.
4 That's not all of it.

5 Q Just with respect to the corrective
6 disclosures.

7 A Right.

8 Q Okay. And then the second --

9 A I'm saying that -- do you want me to -- I'm
10 happy to give you the full answer if you want,
11 but...

12 Q Well, just make sure I haven't, you know,
13 omitted anything you think is important. You know,
14 I think your other criticism is that that's your
15 Figure 5 analysis, that there's a lot of
16 inflationary misstatements that are hard to
17 quantify, and that's -- again, the term I think you
18 used a lot today was complexity. Is that -- is that
19 right?

20 MR. BLAIR: Object to form.

21 THE WITNESS: I agree that there's a lot of
22 complexity. I've restated many times Dr. Hartzmark
23 hasn't done anything on the front end to measure
24 inflation. I agree that there's a lot of complexity
25 there and we've been over that and I incorporate

1 that into my answer, everything we've talked about
2 today.

3 Before you leave the corrective
4 disclosures, it's not just the fact that there's FUD
5 out there. I think that's a contributing factor to
6 why we see the drop we see. But even if the drop
7 were half as big but still statistically significant
8 and there wasn't any FUD or Wells Fargo, the core
9 problem of -- it's not actually a disclosure of
10 factual information from the company. It's still a
11 core problem and I see that as being a very
12 important problem in the corrective disclosures.

13 BY MR. BLATCHLEY:

14 Q The other information wasn't corrective; is
15 that fair? That's your position?

16 A I certainly -- yeah. I think that's right.
17 Certainly on its face it's not corrective. It's
18 not -- it's allegations in the lawsuit but on its
19 face that alone is not corrective information.

20 Q So let me take that. Whether or not the
21 corrective disclosure dates involve disclosure of
22 truly corrective information, actual corrective
23 disclosures I think is the term you used, or were
24 prompted by FUD, that issue is common to all class
25 members, right?

1 MR. BLAIR: Object -- objection to the
2 form.

3 THE WITNESS: If I understand your
4 question, I think the answer is probably yes in the
5 sense that with the out-of-pocket type measure, you
6 are looking at the price of the security that's
7 faced by all investors.

8 So whether or not there's -- any of those
9 are corrective disclosures or those price drops can
10 be considered to be corrective disclosures, that's a
11 question about the impact on the price specific to
12 the allegations in the lawsuit that will affect all
13 investors.

14 I think that's your core question. I don't
15 think there's, you know, one group of investors in,
16 you know, California that are going to be
17 differently affected by a group of investors in
18 Pennsylvania. I'm using those obviously
19 conceptually. I agree with that. I think that was
20 your question.

21 BY MR. BLATCHLEY:

22 Q It was my question. And, again, just to
23 put it another way, nothing -- none of your
24 criticisms or any analysis -- I'm sorry.

25 None of your criticisms are directed by any

1 analysis that's unique to any individual class
2 member?

3 MR. BLAIR: Object to the form.

4 THE WITNESS: Again, I think I would agree
5 with that in concept. I mean, obviously to the
6 extent it affects, you know, ribbons, parsing,
7 scaling, all of those things, any individual will
8 fall somewhere on there in their ribbon and their
9 calculation will be unique to their buy day and
10 their sell day or their hold day. But two people
11 who otherwise have equal information I think are not
12 differently situated in terms of the concerns that
13 I'm raising.

14 BY MR. BLATCHLEY:

15 Q Got it.

16 And so I think you said in your report and
17 throughout that, you know, I think it's that parsing
18 and scaling issue is really what you're talking
19 about and the complexity and the difficulty in doing
20 that.

21 Is your opinion that that is possible to do
22 in this case?

23 MR. BLAIR: Object to the form, asked and
24 answered repeatedly.

25 THE WITNESS: Yeah. Based on what I've

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3

4 I, Kimberly A. Edelen, C.S.R. No. 9042, in and
5 for the State of California, do hereby certify:

6 That prior to being examined, the witness named
7 in the foregoing deposition was by me duly sworn to
8 testify the truth, the whole truth and nothing but
9 the truth;

10 That said deposition was taken down by me in
11 shorthand at the time and place therein named, and
12 thereafter reduced to typewriting under my
13 direction, and the same is a true, correct and
14 complete transcript of said proceedings;

15 That if the foregoing pertains to the original
16 transcript of a deposition in a Federal Case, before
17 completion of the proceedings, review of the
18 transcript { } was {X} was not required.

19 I further certify that I am not interested in
20 the event of the action.

21 Witness my hand this 27th day of April,
22 2020.

23 
24

25 KIMBERLY A. EDELEN, C.S.R. NO. 9042